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OFFICE OF PETITIONS

In re Application of :
Lee et al. :
Application No. 10/705,836 : DECISION ON PETITION
Filed: November 13, 2003 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 6192.0056.C1

This is a decision on the petition filed July 8, 2004, under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. § 121 for the benefit of prior-filed nonprovisional application 09/206,317.

The petition is DISMISSED AS MOOT for the reasons stated below.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000.

The current procedure where a claim for priority under 37 CFR §§ 1.78(a)(3) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR §§ 1.78(a)(2)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR §§ 1.78(a)(3).¹ In the instant case, the Office noted the claim for priority of the above-identified application in the transmittal letter filed with the application, as shown by its inclusion on the filing receipt.

In view of the dismissal of the instant petition as moot, the \$1330.00 fee submitted is unnecessary. Accordingly, this fee will be refunded to Deposit Account No. 23-1951 in due course.

Any inquiries concerning this decision may be directed to Paralegal Liana Chase at (703) 306-0482.

This matter is being referred to Technology Center Art Unit 2858 for examination in due course.

Frances Hicks
Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ Note MPEP 201.11 (V), page 200-75 (Rev. 1. Feb. 2004 and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.